

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

26D-010-RCE

First named inventor: HAGANO et al.

Application No.: 10/622,776

Filed: July 21, 2003

Art Unit: 1751

Examiner: Vijayakumar, Kallambella M

Title: RESIN MEMBER AND METHOD FOR MANUFACTURING THE SAME

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1,540 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

- ☐ has been filed previously on _____.
- ☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ 1740.

- ☐ has been paid previously on _____.
- ☒ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

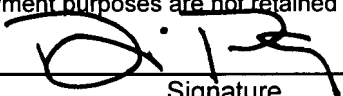
☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

13 NOVEMBER 2007

Date

DAVID G. POSZ

Typed or printed name

37,701

Registration Number, if applicable

12040 South Lakes Drive Suite 101

Address

703-707-9110

Telephone Number

Reston, VA 20191

Address

Enclosures: ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

Typed or printed name of person signing certificate

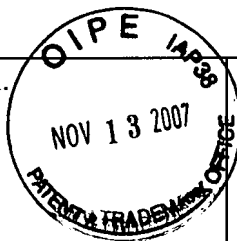
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.

Serial No.: 10/622,776

Filed: July 21, 2003

Title: RESIN MEMBER AND METHOD OF
MANUFACTURING THE SAME



Atty. Dkt.: 26D-010-RCE

Group Art Unit: 1751

Examiner: Vijayakumar, Kallambella M

Date of Allowance: January 24, 2007
Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney

Date: November 13, 2007

Commissioner for Patents
Alexandria, VA 22314

**SECOND REQUEST FOR RENEWED PETITION UNDER 37 C.F.R. § 1.181(a) AND
CONTINGENT PETITION UNDER 37 C.F.R. § 1.137 (b)**

In response to a Decision on Renewed Petition pursuant to 37 C.F.R. § 1.181(a) mailed on October 26, 2007, Applicants respectfully request an expedited grant of the Petition Under 37 C.F.R. § 1.181(a) for Re-mailing of Notice of Allowance and Re-start of Issue Due Date filed on June 13, 2007.

To facilitate this request, the Applicants provide a brief explanation of the Posz Law Group docketing system. The Posz Law Group Case Tracking System is a multi-screen system in which one must click on the appropriate icon to access various information of the application. For example, there are separate screens for each of the following: date of receipt of the official filing receipt, notice of allowance mail and issue fee due dates, mail and due dates of office actions (separate screen for restriction requirements, non-final office actions, final office actions, and advisory actions), miscellaneous reminders screen (for unlimited entry of miscellaneous reminders), and requests for continued examination.

The Applicants have enclosed the following exhibits to further establish the non-receipt of the Notice of Allowance mailed on January 24, 2007 and evidence of other USPTO communications docketed in the Posz Law Group Case Tracking System:

1) Exhibit A

Main screen for the present application showing application's attorney docket number, client name, application number, filing date, title, and status of the application (since a request for continued examination was filed in this case on October 17, 2006, the status "FiledRCE" indicates that the request has been filed).

2) Exhibit B

Filing receipt has been docketed with Applicant's receipt date of November 3, 2003.

3) Exhibit C

Notice to file missing parts has been docketed with a due date of January 5, 2004 (as the two month due date for responding to the notice was January 3, 2004, Sunday, the due date was automatically extended to the following business day of January 5, 2004). Further, even though in the decision on the petition it is noted that no information was docketed for the notice to file missing parts, the receipt date of the official filing receipt was docketed (Exhibit B), and the filing receipt accompanies the notice to file missing parts, to which a response was filed on November 17, 2003 as shown in Exhibit C. Please note the notice to file missing parts may be entered in the same screen as filing receipt or in a miscellaneous reminders screen as it appears in Exhibit C.

4) Exhibit D

Restriction requirement docketed with a date mailed from the USPTO of October 7, 2005 and a date a response was sent to and received by the USPTO of October 31, 2005.

5) Exhibit E

Non-final office action docketed with a date mailed from the USPTO of January 18, 2006 and a date response was sent to and received by the USPTO of April 18, 2006.

6) Exhibit F

Final office action docketed with a date mailed from the USPTO of July 18, 2006 and a date a response was sent to and received by the USPTO of October 17, 2006.

7) Exhibit G

Separate screen for the request for continued examination which was filed on October 17, 2006 together with the response to the final office action (Exhibit F). This screen also shows due date of December 26, 2007 for responding to the

decision on renewed petition pursuant to 37 C.F.R. §1.181(a) mailed on October 26, 2007.

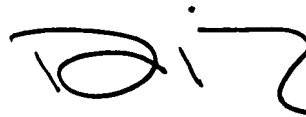
Based on the above and on the information contained in the Petition Under 37 C.F.R. § 1.181(a) for re-mailing of notice of allowance and re-start of issue fee due date and Renewed Petition Under 37 C.F.R. § 1.181(a), filed June 13, 2007 and September 20, 2007, respectively, Applicants respectfully request reconsideration of the present Request for Renewed Petition Under 37 C.F.R. § 1.181(a).

In addition to the Second Request for Renewed Petition Under 37 C.F.R. § 1.181(a), the Applicants concurrently submit a contingent Petition under 37 C.F.R. §1.137 (b). If necessary, please charge the fee for Petition under 37 C.F.R. §1.137 (b) pursuant to 37 C.F.R. 1.17(m) of \$1540 to Deposit Account 50-1147.

Further, the Applicants submit an issue fee and publication fee payment in the amount of \$1740 in response to the non-received Notice of Allowance mailed on January 24, 2007.

Authorization is hereby given to charge any unforeseen fees to Deposit Account 50-1147.

Respectfully submitted,




David G. Posz

Reg. No. 37,701

Posz Law Group, PLC
12040 South Lakes Drive, Suite 101
Reston, VA 20191
(703) 707-9110 (phone)
Customer No. 23400

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

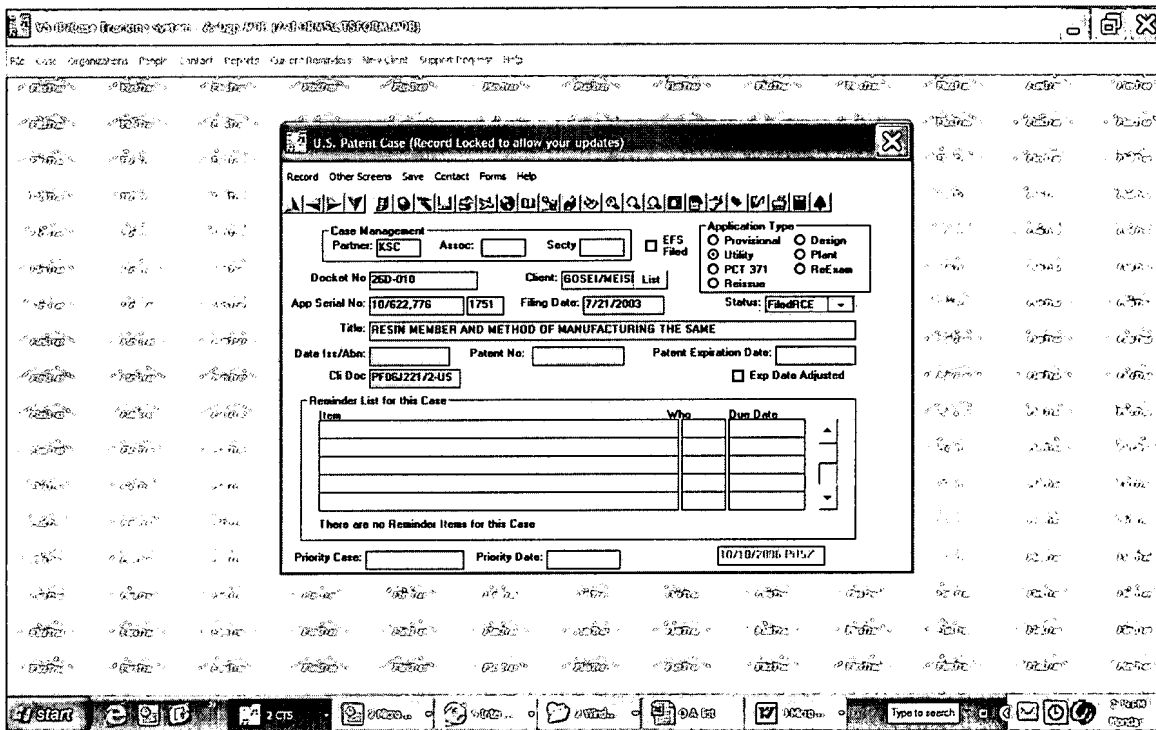
Applicant(s): HAGANO et al.		Atty. Dkt.: 26D-010-RCE
Serial No.: 10/622,776		Group Art Unit: 1751
Filed: July 21, 2003		Examiner: Vijayakumar, Kallambella M
Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME		Date of Allowance: January 24, 2007 Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
 Commissioner for Patents
 Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT A

Main screen for application No. 10/622,776 showing the present application's docket number, client name, application number, filing date, title, and status.



U.S. Patent Case (Record Locked to allow your updates)

Record Other Screens Save Contact Forms Help

Case Management Partners: KSC Assoc: [] Secty: [] EFS Filed: []

Docket No: 26D-010 Client: GOSEI/MEISI List

App Serial No: 10/622,776 Filing Date: 7/21/2003 Status: Filed/RCE

Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME

Date Iss/Abs: [] Patent No: [] Patent Expiration Date: []

Ch Doc: PF06J221/2-US Exp Date Adjusted: []

Reminder List for this Case

Item	Who	Due Date

There are no Reminder Items for this Case

Priority Case: [] Priority Date: [] 10/10/2016 P157

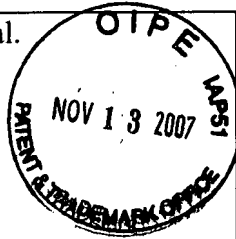
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.

Serial No.: 10/622,776

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Atty. Dkt.: 26D-010-RCE

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Date of Allowance: January 24, 2007
Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
Commissioner for Patents
Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT B

Filing Receipt docketed – received November 3, 2003

U.S. Patent Case More Data (Record Locked to allow your updates)

Docket No: 26D 010

Mailing Parts
Mailed: ☐ Received PostCard: ☐
Due: Sent:

Formal Drawings
Due: Received PostCard: ☐
Sent:

Filing Receipt
Due: 11/21/2003 Received PostCard: ☒
Rev: 11/3/2003

Allowance/Issue Fee
Allowed: ☐ Received PostCard: ☐
Fee Due: Paid:

Foreign Filing
Due Date: CRS: ☐ No Filing Planned: ☐
Date Filed:

File Regular Application Provisional
Due Date: CRS: ☐
Date Filed:

Maintenance Fees
Date Due: Date Paid: C P R R C C S O I
3.5 Yr: ☐ 7.5 Yr: ☐ 11.5 Yr: ☐

Other Adjustments to the Patent Term
☒ PTO Delay ☐ Applicant Delay
Name:
Start Date: End Date:

☐ Change Small Entity Status to Large Entity for this case only
☐ Reviewed PTA of Allowed Application
☐ Reviewed PTA of Issued Patent
Next Office Action Expected:

Inventors
List:
01:
02:
03:
04:
05:
06:
07:
08:
09:
10:

Issued Patent
Due:
Rev:

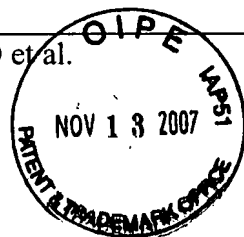
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.

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Atty. Dkt.: 26D-010-RCE

Group Art Unit: 1751

Examiner: Vijayakumar, Kallambella M

Date of Allowance: January 24, 2007

Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
Commissioner for Patents
Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT C

Response to Notice to File Missing Parts docketed – submission completed (done)

November 17, 2003

The screenshot shows a software interface with a main window and a modal 'Add/Edit Reminder' dialog box. The dialog box contains the following information:

- Title:** Add/Edit Reminder (Record Locked to allow your updates)
- Record:** Save Help
- Case:** 26D-010 **Country:** USA **Rule:**
- What:** Response to N. to File Missing Parts?
- Who:** POSZ
- Due:** 1/5/2004 **Done:** 11/17/2003 **Priority:** 1 **Category:**
- Notes:** (Empty text area)
- Footer:** Reminder 1 of 2, 11/17/2003 PO

The background window shows a grid of data, likely a list of patent records, with columns for various fields. The Windows taskbar at the bottom shows the Start button and several open applications.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.	Atty. Dkt.: 26D-010-RCE
Serial No.: 10/622,776	Group Art Unit: 1751
Filed: July 21, 2003	Examiner: Vijayakumar, Kallambella M
Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME	Date of Allowance: January 24, 2007 Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
 Commissioner for Patents
 Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT D

Restriction Requirement docketed

Date mailed: October 7, 2005

Date sent to and received in Patent Office: October 31, 2005

Office Action (Record Locked to allow your updates)

Record Save References Reminders Electronic Files Forms Help

Docket No: 26D-010 Country: USA

Dates / Response

as Parts Quoted ☐ Date Mailed: 10/7/2005
 Restriction Req. ☒ Date Received: 10/31/2005
 Final ☐ Date Due: 11/7/2005
 Received Postcard ☒ Last Date to File: 4/7/2006
 Response Faxed/Emailed ☐ Date Sent/Abandoned: 10/31/2005
 Date Received in Patent Office: 10/31/2005

Notes / Fields / Non-Compliant Response

Examiner: Name: VIJAYAKUMAR, KALLAMBELLA M
 Phone:
 Fax:
 Art Unit / Office:
 10/31/2005 PDSZ

Type of Amendment/Response

☒ Amendment/Remarks ☐ EPA ☐ RCE ☐ Appeal
☐ Preliminary Amendment ☐ Withdrawn by PTO
☐ Examiner Amendment

Advisory Action

☐ Expected ☐ Received
☐ Continue to Show Last Date to File Reminder

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.	Atty. Dkt.: 26D-010-RCE
Serial No.: 10/622,776	Group Art Unit: 1751
Filed: July 21, 2003	Examiner: Vijayakumar, Kallambella M
Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME	Date of Allowance: January 24, 2007 Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
 Commissioner for Patents
 Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT E

Non-final Office Action docketed

Date mailed: January 18, 2006

Date sent to and received in Patent Office: April 18, 2006

PTO/PA System - A Product of the USPTO

Home | Search | Dockets | My Dockets | My Alerts | My Profile | My Settings | My Account | My Help | My Logout

Office of the Commissioner for Patents (Office of the Commissioner for Patents)

Docket No. 26D-010 Country: USA

Dates / Response

Restriction Req. ☐ Date Mailed: 1/18/2006
 Final ☐ Date Received:
 Received Conf. ☒ Date Due: 4/18/2006
 Response ☒ Last Date to File: 7/18/2006
 Date Sent/Abandoned: 4/18/2006
 Date Received in Patent Office: 4/18/2006

Notes / Fields / Non-Compliant Response

Examiner: Name: VIJAYAKUMAR, KALLAMBELLA
 Phone:
 Fax:
 Art Unit / Office:
 4/19/2006 PM 5:07

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.	Atty. Dkt.: 26D-010-RCE
Serial No.: 10/622,776	Group Art Unit: 1751
Filed: July 21, 2003	Examiner: Vijayakumar, Kallambella M
Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME	Date of Allowance: January 24, 2007 Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
 Commissioner for Patents
 Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT F

Final Office Action docketed

Date mailed: July 18, 2006

Date sent to and received in Patent Office: October 17, 2006

The screenshot shows a web-based interface for docketing office actions. The main window displays a form for Docket No. 26D-010, Country: USA. The form is divided into two main sections: 'Dates / Responses' and 'Notes / Fields / Advisory Actions'.

Dates / Responses Section:

- ☐ No Parts Quale
- ☐ Restriction Req.
- ☒ Final
- ☒ Received Postcard
- ☐ Responses Faxed/Emailed
- ☐ Date Sent/Abandoned
- Date Mailed: 7/18/2006
- Date Received: [blank]
- Date Due: 10/19/2006
- Last Date to File: 1/19/2007
- Date Received in Patent Office: 10/17/2006

Notes / Fields / Advisory Actions Section:

- Examiner:**
 - Name: VIJAYAKUMAR, KALLAMBE
 - Phone: [blank]
 - Fax: [blank]
 - Art Unit / Office: [blank]
- Type of Amendment/Response:**
 - ☒ Amendment/Remarks
 - ☐ Preliminary Amendment
 - ☐ Examiner Amendment
 - ☐ CPA
 - ☐ RCE
 - ☐ Appeal
 - ☐ Withdrawn by PTO
- Advisory Action:**
 - ☐ Expected
 - ☐ Received
 - ☐ Continue to Show Last Date to File Reminder

The bottom of the screen shows a Windows taskbar with various application icons and a system clock indicating 10/18/2006 1:05:2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HAGANO et al.	Atty. Dkt.: 26D-010-RCE
Serial No.: 10/622,776	Group Art Unit: 1751
Filed: July 21, 2003	Examiner: Vijayakumar, Kallambella M
Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME	Date of Allowance: January 24, 2007 Confirmation No.: 4241

Attn: OFFICE OF PETITIONS
PAUL SHANOSKI, Senior Attorney
 Commissioner for Patents
 Alexandria, VA 22314

Date: November 13, 2007

EXHIBIT G

Separate screen for the Request for Continued Examination filed on October 17, 2006 along with the response to the final office action.

U.S. Patent Case (Record Locked to allow your updates)

Record Other Screens Save Contact Forms Help

Case Management
 Partner: PUSZ Assoc: Socy ☐ EFS Filed

Docket No: 26D-010-RCE Client: GUSEIN/MEIS List

App Serial No: 10/622,776 (1751) Filing Date: 10/17/2006

Title: RESIN MEMBER AND METHOD OF MANUFACTURING THE SAME

Date Iss/Abn: Patent No: Patent Expiration Date:

Cl Doc: PP06/221/2-US ☐ Exp Date Adjusted

Reminder List for this Case

Item	Who	Due Date
RESPOND TO DECISION - 1 MONTH REMINDER (DUE 12/26)	PUSZ	11/26/2007
Receive Office Action-USA	PUSZ	12/17/2007

There are 2 Reminder Items for this Case

Priority Case: 26D-010 Priority Date: 7/21/2003 9/17/2007 LMU



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

POSZ LAW GROUP, PLC
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON VA 20191

COPY MAILED

OCT 26 2007

OFFICE OF PETITIONS

In re Application of	:	
Hiroyuki Hagano et al.	:	
Application No. 10/622,776	:	DECISION ON RENEWED
Filed: July 21, 2003	:	PETITION PURSUANT TO
Attorney Docket No. 26D-010	:	37 C.F.R. § 1.181(A)
Title: RESIN MEMBER AND METHOD	:	
OF MANUFACTURING THE SAME	:	

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.181(a), filed September 20, 2007, to withdraw the holding of abandonment.

BACKGROUND

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed January 24, 2007, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue or publication fees¹. Accordingly, the above-identified application became abandoned on April 25, 2007. A Notice of Abandonment was mailed on May 23, 2007.

An original petition was filed on June 13, 2007, and was dismissed via the mailing of a decision on September 12, 2007 for failure to establish non-receipt of the Office communication.

¹ See MPEP § 710.02(e).

Decision on Renewed Petition pursuant to 37 C.F.R. § 1.181(a)

RELEVANT PORTION OF THE MPEP

MPEP §711.03(c) (I) (A) sets forth, in toto:

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement (emphasis added). For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

ANALYSIS

The showing in this renewed petition is not sufficient to withdraw the holding of abandonment because Petitioner has again failed to establish non-receipt of the Office communication.

With the original petition, Petitioner included a statement that a thorough search of the file jacket and docket records was conducted. Petitioner further included a copy of a screenshot of the "Posz Law Group Case Tracking System," which was asserted to serve as the docket record where the non-received Office

Decision on Renewed Petition pursuant to 37 C.F.R. § 1.181(a)

communication would have been entered and docketed, had it been received. The docket record that was provided with the original petition was not legible.

With this renewed petition, Petitioner has submitted a legible copy of the docket record.

The submission has been reviewed, and it does not appear that this submission comprises a docket record where the nonreceived Office communication would have been entered had it been received and docketed. The electronic file has been reviewed, and it is clear that a Notice to File Missing Parts of Nonprovisional Application was mailed on November 17, 2003, a Restriction Requirement was mailed on October 7, 2005, a non-final Office action was mailed on January 18, 2006, and a Final Office action was mailed on July 18, 2006; yet none of these mailings appear in the docket record. As such, the "Posz Law Group Case Tracking System" does not comprise a docket record where the nonreceived Office communication would have been entered had it been received and docketed.

This screenshot contains a section that is entitled "Allowance/Issue Fee," and contains fields entitled "Allowed," "Fee Due," "Paid," and "Received Postcard." Each of these fields is blank, and Petitioner has placed a notation on this screenshot that reads "the notice of allowance would have been entered here if it had been received and docketed." However, it does not appear that this is necessarily the case: the screenshot also contains a section entitled "Missing Parts," and each of the fields that are entitled "mailed," "due," and "sent" are blank, however there is no doubt that the Notice of Missing Parts was received; on November 17, 2003 a response to this mailing, executed by Petitioner, was received in the Office. Consequently, it does not appear that all Office communications that are received are entered and docketed into the "Posz Law Group Case Tracking System."

It follows that the present petition must be DISMISSED.

It does not appear that Petitioner will be able to meet the requirements of Delgar. As such, Petitioner may wish to strongly consider filing a petition under 37 C.F.R. §§ 1.137(a) and/or (b).

CONCLUSION

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. § 1.181(a) and/or Petition Under 37 C.F.R. § 1.137(a) and/or (b)." This is not a final agency action within the meaning of 5 U.S.C § 704. The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail², hand-delivery³, or facsimile⁴. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web⁵.

NOTICE:

Thereafter, there will be no further reconsideration of this matter^{6, 7}.

Petitioner's only relief is a petition under 37 C.F.R. §§ 1.137(a) and/or (b), and - having been made aware of this reality - any delay in promptly seeking relief under 37 C.F.R. § 1.137 may be considered evidence of intentional delay and an absolute bar to revival.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

4 (571) 273-8300- please note this is a central facsimile number.

5 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

6 For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

7 If, on the second request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. §1.137(e), will not apply to that decision.

Decision on Renewed Petition pursuant to 37 C.F.R. § 1.181(a)

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225⁸. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski

Senior Attorney
Office of Petitions
United States Patent and Trademark Office

⁸ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.